

SECOND REGULAR SESSION

HOUSE BILL NO. 1282

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GASKILL.

Pre-filed December 19, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3176L.011

AN ACT

To repeal section 490.065, RSMo, and to enact in lieu thereof one new section relating to scientific and technical evidence, with an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 490.065, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 490.065, to read as follows:

490.065. 1. [In any civil action, if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

2. Testimony by such an expert witness in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

3. The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable.

4. If a reasonable foundation is laid, an expert may testify in terms of opinion or inference and give the reasons therefor without the use of hypothetical questions, unless the court believes the use of a hypothetical question will make the expert's opinion more understandable or of greater assistance to the jury due to the particular facts of the case.] **This act shall be known and cited as the "Common Sense Scientific and Technical Evidence Act".**

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 **2. Testimony in the form of an opinion concerning a scientific, technical, or other**
18 **specialized matter may be admitted, but only if the court determines that the opinion:**

19 **(1) Is based on scientific knowledge, where the opinion purports to be scientific,**
20 **including medical, technical, or specialized knowledge, or where the opinion purports to**
21 **involve knowledge from other technical or specialized disciplines;**

22 **(2) Will assist the trier of fact to understand the evidence or to determine a fact in**
23 **issue; and**

24 **(3) Is presented by a witness who is qualified as an expert.**

25 **3. In determining whether an opinion is based on scientific, technical, or other**
26 **specialized knowledge, and hence sufficiently reliable to warrant its admission, the court**
27 **shall consider, among other factors, whether the opinion follows from or is based on:**

28 **(1) A theory or methodology developed in accordance with the scientific method,**
29 **including, where appropriate, publication in the peer-reviewed literature, or such other**
30 **systematic method of acquiring knowledge that is generally accepted in the relevant**
31 **discipline to ensure reliability and validity;**

32 **(2) The theory or methodology or the relevant techniques based on that theory or**
33 **methodology and underlying the opinion have a sufficiently low error rate to ensure**
34 **reliability, or the experimental results underlying the theory or methodology have been**
35 **replicated by different laboratories and different researchers; and**

36 **(3) The theory or methodology or opinion, as the case may be, is generally accepted**
37 **in the relevant scientific, technical, or other community.**

38 **4. An opinion will assist the trier of fact to understand the evidence or to determine**
39 **a fact in issue, if and only if the court determines the following:**

40 **(1) The relationship between the opinion and the supporting theory and**
41 **experiments is sufficiently close and congruent so as not to render the opinion speculative;**
42 **and**

43 **(2) The opinion may be validly and reliably drawn from the theory.**

44 **5. A witness with knowledge, skill, experience, training, or education in a particular**
45 **field may testify as an expert with respect to that particular field.**

46 **6. Notwithstanding any of the provisions of this section to the contrary, the**
47 **testimony of an expert witness may not be admitted if the witness is entitled to receive any**
48 **compensation contingent on the outcome of any claim or case with respect to which the**
49 **testimony is being offered.**

50 **7. In interpreting and applying this act, the courts of this state shall be guided by**
51 **the opinions of the United States Supreme Court in *Daubert v. Merrell Dow***
52 ***Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *General Eclectic v. Joiner*, 522 U.S. 136 (1997),**

53 **and *Kumho Tire Co. Ltd. v. Carmichael*, 526 U.S. 137 (1999).**

54 **8. This act shall apply to all trials commencing on or after its effective date.**

Section B. Because immediate action is necessary to ensure uniform handling of
2 scientific and technical evidence by the courts, section A of this act is deemed necessary for the
3 immediate preservation of the public health, welfare, peace, and safety, and is hereby declared
4 to be an emergency act within the meaning of the constitution, and section A of this act shall be
5 in full force and effect upon its passage and approval.